

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA : CRIMINAL NO. 11-577-1
:
v. : Philadelphia, Pennsylvania
: March 26, 2012
VINCENT JOSEPH DEMSKY : 9:31 o'clock a.m.
.

CHANGE OF PLEA HEARING
BEFORE THE HONORABLE TIMOTHY R. RICE
UNITED STATES MAGISTRATE JUDGE

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APPEARANCES:

For the Government: ASHLEY K. LUNKENHEIMER, ESQUIRE
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For the Defendant: JAMES LAMMENDOLA, ESQUIRE
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Also Present: Lee Salzburg
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1 (The following occurred in open court at 9:31
2 o'clock a.m.):)

3 THE COURT: Good morning. Please be seated.

4 ALL: Good morning, your Honor.

5 THE COURT: You guys switched tables on me.

6 MR. LAMMENDOLA: Oh, my fault.

7 THE COURT: That's all right.

8 MS. LUNKENHEIMER: I didn't want to make him move.

9 THE COURT: Officer Binns, how are you?

10 OFFICER BINNS: Good. How are you?

11 THE COURT: Good to see you.

12 All right. Nelson is our court reporter, I think
13 everybody knows him. Thanks, Nelson, for coming up.

14 THE AUDIO OPERATOR: Good morning, your Honor.

15 THE COURT: And these are our Temple students, Tony
16 Rock -- Tony is a graduate, I'm sorry, he's our new law clerk
17 here, and Dee Gobel (ph.) and my law clerk, Amy Schelhammer.
18 And you guys know Chavela, right?

19 Mr. Lammendola, good to see you.

20 MR. LAMMENDOLA: Same here, Judge.

21 THE COURT: Mr. Demsky, good morning.

22 THE DEFENDANT: Good morning.

23 THE COURT: All right. We were going to have a
24 trial today, but we're not.

25 MS. LUNKENHEIMER: Apparently not.

1 MR. LAMMENDOLA: Right.

2 THE COURT: So is it true that you want to plead
3 guilty, Mr. Demsky?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Before we get to that, I
6 want to ask -- Nelson, could you swear Mr. Demsky, please?

7 THE AUDIO OPERATOR: Please rise and raise your
8 right hand.

9 VINCENT JOSEPH DEMSKY, Sworn.

10 THE AUDIO OPERATOR: Please state your full name for
11 the record.

12 THE DEFENDANT: Vincent Joseph Demsky.

13 THE AUDIO OPERATOR: Thank you.

14 THE COURT: Thank you, sir.

15 Sir, before we go any further, I want to explain to
16 you that I'm a Magistrate Judge and you have a right to have
17 your case done by a -- or handled by a District Court Judge
18 -- it would be Judge Jones, I believe?

19 MS. LUNKENHEIMER: Yes, your Honor.

20 THE COURT: And do you understand that you have
21 waived that and you're going to agree to proceed before me?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. You don't have to do that if you
24 don't want to.

25 THE DEFENDANT: Right, I understand.

1 THE COURT: Okay, great.

2 Now, sir, if I say anything today that you don't
3 understand or if you need to interrupt me to explain
4 something, just tell me. And if you need to speak with Mr.
5 Lammendola --

6 THE DEFENDANT: Okay.

7 THE COURT: -- he's a very experienced lawyer, we
8 can take time to let you talk to him if you're confused or
9 don't understand anything.

10 THE DEFENDANT: Okay, thank you.

11 THE COURT: All right? And your full name is
12 Vincent Joseph Demsky, is that what I heard?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. And how old are you, sir?

15 THE DEFENDANT: I'm 50.

16 THE COURT: Okay. And can you read, write and speak
17 English?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. And how far did you go in
20 school?

21 THE DEFENDANT: I quit school in 11th grade.

22 THE COURT: Okay. And have you ever had or been
23 treated for drug or alcohol addiction or mental illness?

24 THE DEFENDANT: Uh, drug addiction. I was in a
25 rehab when I was younger, in my early 20s.

1 THE COURT: Okay.

2 THE DEFENDANT: I was really a little wild cat when
3 I was in my 20s, but --

4 THE COURT: Yeah, I think a lot of us --

5 THE DEFENDANT: -- you know, it's changed now.

6 THE COURT: -- a lot of us were. I don't know about
7 Ms. Lunkenheimer, but --

8 (Laughter.)

9 MS. LUNKENHEIMER: I wasn't allowed to be, your
10 Honor.

11 THE COURT: Yes. If you knew her dad, you knew that
12 wasn't permitted, right?

13 (Laughter.)

14 THE COURT: Mr. Lammendola knows her dad.

15 MR. LAMMENDOLA: That's right.

16 THE COURT: Okay. Are you currently in any type of
17 drug treatment?

18 THE DEFENDANT: Uh, I'm on Suboxone. I was
19 prescribed Oxycontin when this happened and I was prescribed
20 it after years for my back, I had a little back trouble, but
21 I'm off of it.

22 MR. LAMMENDOLA: Your Honor, if the Court pleases,
23 he's on Suboxone medication right now to -- prescribed by his
24 doctor for the purposes of weaning him off any kind of
25 Oxycontin addiction.

1 THE COURT: Right, I noticed that on the Pretrial
2 Services drug test.

3 THE DEFENDANT: Yeah.

4 MR. LAMMENDOLA: Yes.

5 MS. LUNKENHEIMER: Yes, your Honor. I mentioned to
6 Mr. Lammendola to make sure that it was understood, because
7 we have charged some people with buying and selling Suboxone,
8 so those would be improper uses. In his case, if he's under
9 proper medical care, it can be properly used to help you
10 withdraw from Oxycodone.

11 THE COURT: Okay.

12 THE DEFENDANT: I've given Lourdes Roscoe my
13 prescriptions and everything and showed them to her.

14 THE COURT: Right. Okay, very good. And are you
15 feeling all right today?

16 THE DEFENDANT: I'm feeling great.

17 THE COURT: Okay.

18 THE DEFENDANT: A hundred percent, real good.

19 THE COURT: That's good.

20 THE DEFENDANT: Totally different.

21 THE COURT: Because of the medicine?

22 THE DEFENDANT: Yeah.

23 THE COURT: Okay. And can you hear and understand
24 me --

25 THE DEFENDANT: Yes, yes, I can.

1 THE COURT: -- adequately?

2 Now, has Mr. Lammendola gone over the charges
3 against you and fully explained your trial rights and the
4 defenses you could bring to those charges?

5 THE DEFENDANT: Yes, he has.

6 THE COURT: All right. Now, I understand you're not
7 signing a plea agreement, you're just going to plead what we
8 call open to the charges without any agreement --

9 THE DEFENDANT: Right.

10 THE COURT: -- from the Government?

11 THE DEFENDANT: Yes.

12 THE COURT: So that means the Government is free to
13 do whatever they want in terms of sentencing recommendations,
14 there's no agreement on what the sentencing range will be.

15 THE DEFENDANT: Right.

16 THE COURT: So you're just going to see where it
17 goes?

18 THE DEFENDANT: Throw myself on the mercy of the
19 Court, yeah.

20 THE COURT: Okay. Now, have you had enough time to
21 talk your case over with Mr. Lammendola?

22 THE DEFENDANT: Oh, yes.

23 THE COURT: Okay. So far has he done everything
24 you've wanted him to do?

25 THE DEFENDANT: Yes, he has --

1 THE COURT: All right. I noticed he --

2 THE DEFENDANT: -- more than enough.

3 THE COURT: -- he filed numerous motions, including
4 one alleging that the Government engaged in outrageous
5 conduct.

6 THE DEFENDANT: Yeah.

7 THE COURT: Now -- which is a pretty serious
8 allegation. Now, you're going to be giving up that motion
9 and all the other issues you raised if you plead guilty.

10 THE DEFENDANT: I understand.

11 THE COURT: Okay. And I won't ask the Government to
12 summarize the terms of the plea, because there's no plea
13 agreement, but did the Government make any promises to you
14 either through Mr. Lammendola or privately that are not
15 memorialized anywhere?

16 THE DEFENDANT: No.

17 THE COURT: Okay. Do you agree with that, Mr.
18 Lammendola?

19 MR. LAMMENDOLA: I do, your Honor.

20 THE COURT: All right. Did anyone else promise you
21 anything to get you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: For example, did Mr. Lammendola urge you
24 to plead guilty for whatever reason?

25 THE DEFENDANT: No.

1 THE COURT: Okay. So this is totally your decision?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Do you understand that no
4 one can guarantee you what the sentence you will receive from
5 me will be?

6 THE DEFENDANT: I understand.

7 THE COURT: Okay. Did anyone use force, violence or
8 threats to get you to plead guilty?

9 THE DEFENDANT: No.

10 THE COURT: Are you pleading guilty because of your
11 own free will?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Did anyone tell you what to
14 say today or put words in your mouth?

15 THE DEFENDANT: No.

16 THE COURT: Do you understand that you're entering a
17 plea to a misdemeanor and you will be adjudged guilty of that
18 charge, which may deprive you of valuable civil rights such
19 as the right to vote or hold public office or serve on a
20 jury?

21 THE DEFENDANT: I understand.

22 THE COURT: I'm not sure if that applies to
23 misdemeanors, but -- do you know, Ms. Lunkenheimer?

24 MS. LUNKENHEIMER: Your Honor, honestly, I don't
25 know the answer either.

1 THE COURT: Okay. Well, that's a possibility.

2 THE DEFENDANT: Right.

3 THE COURT: You're a United States citizen?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Do you understand that your
6 offense is covered by the Sentencing Guidelines, and they're
7 a range that's prescribed by the Sentencing Commission and
8 they give a recommended term of sentence that I may or may
9 not be required to impose?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. And that a Probation Officer will
12 prepare a presentence report, which will set out your
13 Guideline range?

14 THE DEFENDANT: Okay.

15 THE COURT: And if you disagree with the presentence
16 report, your guilty plea is still binding on you. Do you
17 understand that?

18 THE DEFENDANT: Okay, yes.

19 THE COURT: All right. But you can contest the
20 report, Mr. Lammendola can raise objections to it and we can
21 have a hearing before sentencing if necessary.

22 THE DEFENDANT: Okay.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Right.

25 THE COURT: All right. Do you understand that the

1 drug amounts and the type of drugs involved can have a
2 significant effect on your Sentencing Guideline range?

3 THE DEFENDANT: Yes.

4 THE COURT: And there are circumstances where --
5 well, he couldn't be held responsible for anybody else's drug
6 weight, is that correct?

7 MS. LUNKENHEIMER: Right, your Honor.

8 THE COURT: Okay. Now, do you understand that your
9 attorney and the Government can agree on facts and make
10 recommendations, motions or requests at sentencing, but I
11 don't have to do what they ask me to do?

12 THE DEFENDANT: I understand, yes.

13 THE COURT: Okay? But your plea will still be
14 binding whether or not I agree with the facts and
15 recommendations of the Government and your lawyer.

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay.

20 MS. LUNKENHEIMER: Your Honor, just to go back to
21 that point. We're not -- he was charged with buying, so it's
22 simple possession charges. There may be relevant conduct
23 that I can't say at this moment that we may present at
24 sentencing, but it would be his relevant conduct, it --

25 THE COURT: Okay, very good.

1 Do you understand that there's no more parole and
2 that, if a sentence of imprisonment is imposed, you would
3 have to serve the whole time of imprisonment that you're
4 sentenced to?

5 THE DEFENDANT: I understand.

6 THE COURT: Okay. Do you understand that you have a
7 right to appeal your sentence to a higher court, which could
8 modify or set aside the sentence or order me to resentence
9 you?

10 THE DEFENDANT: Yes.

11 THE COURT: And by pleading without a plea agreement
12 you're retaining all your appellate rights?

13 THE DEFENDANT: Yes.

14 THE COURT: So you'll be able to challenge, for
15 example, anything that happens in this proceeding --

16 THE DEFENDANT: Okay.

17 THE COURT: -- you'll be able to challenge anything
18 that happens at the sentencing.

19 THE DEFENDANT: All right.

20 THE COURT: Now, the Government could also appeal
21 the sentence. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Now, there's certain
24 constitutional rights that I want to go over with you. Do
25 you have any questions so far?

1 THE DEFENDANT: No.

2 THE COURT: Okay. Do you understand that you're
3 presumed innocent and, until you're proven guilty by the
4 Government beyond a reasonable doubt, that presumption will
5 continue? So, as you sit here today, you're presumed
6 innocent --

7 THE DEFENDANT: Okay.

8 THE COURT: -- until I accept your plea.

9 THE DEFENDANT: Okay.

10 THE COURT: All right? Do you understand that you
11 have a right to the assistance of a lawyer at every stage of
12 the proceedings, including before trial, during trial, after
13 trial and for any appeals to higher courts?

14 THE DEFENDANT: I understand.

15 THE COURT: All right. Do you understand that if
16 you cannot afford a lawyer, I would appoint a lawyer for you
17 free of charge?

18 THE DEFENDANT: Yes.

19 THE COURT: So if you're pleading guilty just
20 because you think you can't afford to pay Mr. Lammendola for
21 trial, I can get you a free lawyer, so don't plead guilty for
22 that reason.

23 MR. LAMMENDOLA: Judge, I'm CJA-appointed on this.

24 (Laughter.)

25 THE COURT: All right, okay. So you're appointed

1 already. Okay.

2 Do you understand you have a right to plead not
3 guilty and persist in that plea and have your case tried by a
4 jury of 12 --

5 THE DEFENDANT: Yes.

6 THE COURT: -- or by me?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Do you understand that you
9 have a right to a jury of your peers drawn from residents in
10 this district and that you would get help in selecting a
11 jury?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Lammendola would help you with that.

14 Do you understand that in order to find you guilty
15 the verdict of the jury must be unanimous, that means that
16 all 12 jurors must agree that you were proven guilty by the
17 Government beyond a reasonable doubt?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Do you understand that you
20 could obtain a subpoena or court order to bring witnesses to
21 court to testify at trial on your behalf?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that if you're found
24 guilty, you could appeal such a finding of guilt to a higher
25 court, which could set aside or modify the finding of guilt

1 or give you a new trial?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that at trial you
4 would have the right to confront and cross-examine witnesses?
5 That is to be in the courtroom and see your witnesses face-
6 to-face, hear and question what they had to say --

7 THE DEFENDANT: Yes.

8 THE COURT: -- for every witness the Government
9 presents?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. And by pleading guilty
12 you're giving up that right to confront the people who are
13 testifying against you.

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Do you understand that at a
18 trial you do not have to testify or take the witness stand if
19 you don't want to?

20 THE DEFENDANT: Okay.

21 THE COURT: Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that no one can force
24 you to do that and, if you elect not to take the witness
25 stand, the Assistant United States Attorney, Ms.

1 Lunkenheimer, cannot comment on or make reference to your
2 failure to testify?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. Do you understand that by
5 entering this guilty plea there will be no trial and you're
6 giving up many of the rights that I have told you about and
7 you will be admitting that you are guilty of the crime
8 charged in the information?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Ms. Lunkenheimer -- the
11 Government would have to prove -- let me ask one more
12 question before I call on Ms. Lunkenheimer.

13 In order to prove you guilty, the Government would
14 have to prove each of the following elements beyond a
15 reasonable doubt. Now, these are the legal things the
16 Government would be required to show in order to convince
17 someone you're guilty and I'm going to ask the prosecutor to
18 outline what those elements are now.

19 THE DEFENDANT: Okay.

20 MS. LUNKENHEIMER: Yes, your Honor. If this case
21 were to go to trial, the Government would prove beyond a
22 reasonable doubt the following things: That the Defendant
23 intended to commit the crime of illegally possessing a
24 controlled substance, in this case a mixture or substance
25 containing a detectable amount of Oxycodone, and thereafter

1 the Defendant did an act constituting a substantial step
2 towards the commission of that crime which strongly
3 corroborates the Defendant's criminal intent.

4 THE COURT: Do you understand what she said, Mr.
5 Demsky?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you have any questions about that?

8 THE DEFENDANT: No.

9 THE COURT: Have you talked that over, those legal
10 requirements over with Mr. Lammendola?

11 THE DEFENDANT: Yeah.

12 THE COURT: All right. How about the maximum
13 penalties --

14 MS. LUNKENHEIMER: Yes, your Honor.

15 THE COURT: -- could you outline those?

16 MS. LUNKENHEIMER: The following statutory maximum
17 sentence applies in this case: For Count 1, which is the
18 only count, attempted possession of Oxycodone, the maximum is
19 one year in prison, a maximum of one year of supervised
20 release, a \$1,000 fine and a \$100 special assessment.

21 The Defendant also needs to understand that if
22 supervised release is imposed and its terms and conditions
23 are violated, then the Defendant could face up to an
24 additional term of imprisonment, in this case up to one year
25 for the count of conviction, and that would be without

1 necessarily receiving any credit for time already served on
2 the actual sentence.

3 THE COURT: Okay. Do you understand that, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: So that's the maximum penalty that you
6 could receive if you enter your guilty plea and that would be
7 as far as I could go in sentencing you?

8 THE DEFENDANT: Okay.

9 THE COURT: Okay?

10 THE DEFENDANT: Yes.

11 THE COURT: That's not what -- we don't know what
12 sentence the Guidelines will call for, but that's the worst-
13 case scenario.

14 Now, is there any collateral consequences with
15 respect to Mr. Demsky's employment?

16 MS. LUNKENHEIMER: Your Honor, it's my understanding
17 that there are, there may be anyway, we are not involved in
18 that decision. As I understand it, the Boeing Company has
19 placed everybody on some sort of status where they're no
20 longer working at the plant and then they're up for hearings,
21 and they have certain arbitration and other rights under the
22 collective bargaining agreement. We are, again, not involved
23 in that, but a finding of guilt may affect their decision as
24 to whether to terminate them or not. Mr. Lammendola can
25 probably speak better to that.

1 MR. LAMMENDOLA: Judge, what I know right now is
2 he's suspended, I don't know -- I think perhaps Boeing may
3 take him back with a misdemeanor charge, but --

4 THE DEFENDANT: I'm suspended without pay, but I
5 have health insurance. They're paying my health insurance,
6 so I can continue seeing the doctor, and the union wants to
7 get me back. There's a handful of us that want to -- that
8 the bosses and managers want back, I'm one of them because of
9 my work record, and -- and that's --

10 THE COURT: Okay.

11 THE DEFENDANT: -- that's it.

12 THE COURT: All right. You can be seated, sir.
13 Thank you.

14 Well, I just want you to understand that it sounds
15 like there's a possibility --

16 THE DEFENDANT: There's a very strong possibility
17 that I could get my job back --

18 THE COURT: All right.

19 THE DEFENDANT: -- because the managers and -- I
20 mean, I was a good worker, I -- the week before this
21 happened, I had actually set a record for getting the most
22 blades done by one guy and I never even got the award because
23 of this happening, you know.

24 THE COURT: Okay. All right. Well, I just want you
25 to understand that by pleading guilty there's a possibility

1 that that may impact whether you get your job back. So I
2 want to make sure you've thought that through --

3 THE DEFENDANT: Yes.

4 THE COURT: -- because it sounds like Ms.
5 Lunkenheimer doesn't have control over that.

6 THE DEFENDANT: No, she doesn't.

7 THE COURT: Your lawyer acknowledges that it could
8 have an impact, but we're not sure yet. So I want to make
9 sure you've thought that through before you enter a guilty
10 plea.

11 THE DEFENDANT: Yes, we did.

12 THE COURT: All right. So, despite the fact that it
13 could affect whether you get your job back, you're willing to
14 plead guilty?

15 THE DEFENDANT: Absolutely, yes.

16 THE COURT: Did you talk that over with Mr.
17 Lammendola?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Okay. All right. I just want to make
20 sure that's the case.

21 Ms. Lunkenheimer, could you please summarize for Mr.
22 Demskey the facts that the Government would offer at trial?

23 And, Mr. Demskey, what I want you to do is I want you
24 to listen to Ms. Lunkenheimer, because I'm going to ask you
25 after she's done whether or not that is in fact what you did

1 and whether you admit to doing what she said.

2 MS. LUNKENHEIMER: Yes, your Honor. If this case
3 were to proceed to trial, the Government would prove beyond a
4 reasonable doubt that on September 22nd, 2011 the Defendant
5 met with an individual cooperating with the Government inside
6 of a building on Boeing Company's Ridley Park, Pennsylvania
7 campus. There the Defendant bought two placebo Oxycontin 80-
8 milligram tablets from the cooperating source for \$80.
9 That's what's charged in Count 1. And just to be clear,
10 Oxycontin would contain if it were not a placebo the active
11 ingredient of Oxycodone and Ridley Park is in the Eastern
12 District of Pennsylvania.

13 THE COURT: Okay. Mr. Demsky, did you hear what Ms.
14 Lunkenheimer said?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you admit that that's exactly what
17 you did?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. So she summarized truthfully
20 and accurately the conduct that you're charged with?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Ms. Lunkenheimer, do you
23 have a copy of the information? I don't -- do you have
24 that --

25 MS. LUNKENHEIMER: I do, your Honor.

1 THE COURT: Could you give that to Ms. Settles?

2 MS. LUNKENHEIMER: Yes.

3 THE COURT: Because we're going to have Mr. Demsky
4 enter his plea and I didn't have a copy with me.

5 All right. I'm going to make -- is there any other
6 questions, Mr. Lammendola, that you think I should ask?

7 MR. LAMMENDOLA: No, your Honor, I believe you
8 covered everything.

9 THE COURT: All right. Ms. Lunkenheimer?

10 MS. LUNKENHEIMER: No, your Honor.

11 THE COURT: All right. I make the following
12 findings: I find that the Defendant is fully alert,
13 competent and capable of entering an informed plea. I make
14 the finding that your plea is knowing and voluntary, that
15 it's supported by an independent basis in fact containing
16 each of the essential elements of the offenses charged. And
17 I find that the plea of guilty that you're about to enter is
18 therefore accepted and you will be adjudged guilty upon
19 entering your plea.

20 So, Ms. Settles, would you take Mr. Demsky's plea?

21 THE DEPUTY CLERK: Yes, your Honor.

22 THE COURT: Please stand, sir.

23 THE DEPUTY CLERK: Vincent Joseph Demsky, you've
24 been charged in Criminal Indict -- I'm sorry, in Information
25 Number 11-577, in violation of 21 U.S.C. Section 846,

1 attempted possession of Oxycodone; how do you plead, guilty
2 or not guilty?

3 THE DEFENDANT: Guilty.

4 THE DEPUTY CLERK: Thank you.

5 THE COURT: Okay, sir, I'll accept your guilty plea
6 and I find it's knowingly and voluntarily entered, you're
7 going to be adjudged guilty of this offense. You can be
8 seated, sir.

9 Now, Mr. Lammendola, you filed a motion, and I
10 didn't get a response from Ms. Lunkenheimer yet, asking me to
11 impose special probation pursuant to 18 U.S.C. Section 3607.

12 MR. LAMMENDOLA: 3607.

13 THE COURT: What's your position on that?

14 MS. LUNKENHEIMER: Yes, your Honor, it's our initial
15 position that a finding of guilt under the statute is
16 necessary for this provision to even be applicable and,
17 therefore, that is why we haven't responded yet to the
18 motion. I expect and we would like the opportunity to see
19 the Probation Office's report, the PSR, the presentence
20 report to confirm this, but it's possible that Mr. Demsky
21 does not statutorily qualify for this provision because of
22 some prior convictions back -- they're old ones, but
23 nonetheless they appear to be controlled substance
24 convictions back in the '80s and early '90s, I believe.

25 MR. LAMMENDOLA: But they were primarily possession

1 charges back in early 1980, Judge, '81.

2 THE COURT: But were they convictions or ARD?

3 MR. LAMMENDOLA: You know, from the reports I have
4 on it, they look like ARD, but I can't -- I'm not sure about
5 it. I'm sure the presentence report will, you know,
6 elucidate that when the report --

7 MS. LUNKENHEIMER: Your Honor, I don't have it in
8 front of me and the Pretrial Services Officer does, so maybe
9 he can speak to it, but as I remember --

10 THE COURT: Mr. Salzburg, how are you?

11 MS. LUNKENHEIMER: -- some were -- some were not.

12 MR. SALZBURG: Your Honor, how are you today? I'm
13 only -- I'm looking at the report that was written by Ms.
14 Roscoe and there is a criminal history in here that does have
15 some dispositions to it.

16 THE COURT: What are the dispositions?

17 MR. SALZBURG: All right. Briefly, in June of 1980,
18 there was a narcotic possession charge in Wildwood where he
19 got six days confinement in municipal court. There was
20 another conviction in '81, Cape May County, 60 days suspended
21 confinement. In '82 there was an assault case, but he was
22 convicted of criminal mischief and simple assault, two years
23 probation on that. In '82 there was an FOJ that was
24 transferred to another jurisdiction; there's a no-disposition
25 on a criminal attempt theft, auto. In 1984, there's a theft

1 charge and some related offenses, no disposition. In '88,
2 possession of a controlled substance in Ridley Township with
3 no disposition. And that appears to be the prior record.

4 THE COURT: All right. So is it agreeable to
5 everyone if we order a presentence investigation and then
6 I'll just hold this under advisement?

7 MS. LUNKENHEIMER: Yes, your Honor.

8 MR. LAMMENDOLA: That's fine, Judge.

9 MS. LUNKENHEIMER: I would like to say that,
10 separate from what his eligibility is under the statute, the
11 Government may be opposing that, taking the position that
12 under the circumstances of this case it's not an appropriate
13 disposition.

14 THE COURT: Because it's at a Defense contractor?

15 MS. LUNKENHEIMER: Right, because of the nature of
16 the employment and the work that was being done.

17 THE COURT: Okay.

18 MS. LUNKENHEIMER: So we will file a motion on that
19 and if your Honor --

20 THE COURT: Why don't I do this? I'll just deny it
21 without prejudice and then after the presentence report is
22 done, if we need to --

23 MR. LAMMENDOLA: Readdress it?

24 THE COURT: -- you can renew it, if you want --

25 MS. LUNKENHEIMER: Yes, your Honor, because I --

1 THE COURT: -- before sentencing.

2 MS. LUNKENHEIMER: -- do believe it's -- it's really
3 a sentencing motion, as we understand it.

4 THE COURT: Okay. All right, very good.

5 Now, Mr. Salzburg, I got your report about bail and
6 it sounds like everybody is agreeable that Mr. Demsky should
7 remain on the conditions that are in place right now?

8 MR. SALZBURG: Yes, your Honor.

9 THE COURT: Any compliance issues that you've had?

10 MR. SALZBURG: Not that I can see in the report,
11 your Honor.

12 THE COURT: Okay, I didn't see any either.

13 MS. LUNKENHEIMER: Your Honor, it does say -- and
14 I'm agreeable that he remain on pretrial release, but just if
15 he could be reminded. It does say here that since his
16 release he's missed a few scheduled contacts, if he could
17 just be reminded not to miss those and the importance of
18 them, I would appreciate it.

19 THE COURT: Ms. Roscoe enjoys seeing you --

20 THE DEFENDANT: I never --

21 THE COURT: -- Mr. Demsky --

22 THE DEFENDANT: -- I never missed no appointments.

23 THE COURT: -- so just keep your appointments with
24 her.

25 THE DEFENDANT: I never missed anything. She said

1 it was okay for me not to show up because I was working.

2 THE COURT: Okay. All right.

3 THE DEFENDANT: I never missed any appointments.

4 THE COURT: Okay, that's fine. Just keep up your
5 good track records with Pretrial Services --

6 THE DEFENDANT: Okay, thank you, I will.

7 THE COURT: -- it sounds like they're pleased with
8 your result.

9 All right. I'm going to order a presentence report
10 and -- I don't have the calendar here -- do you want me to
11 set a date for sentencing now?

12 MS. LUNKENHEIMER: You don't have to, your Honor, if
13 you want to send it out, that's fine with me.

14 THE COURT: All right. I'll pick a date and I'll
15 send a notice out.

16 MR. LAMMENDOLA: That's fine, Judge.

17 THE COURT: Do you guys have any vacations, the
18 three of you, this summer scheduled? I don't want to
19 schedule it during someone's vacation.

20 MR. LAMMENDOLA: No, I don't anyway.

21 THE COURT: How about you, Mr. Demsky?

22 THE DEFENDANT: No, I don't have anything planned.

23 THE COURT: Okay.

24 MS. LUNKENHEIMER: Your Honor, I think that Ms.
25 Taylor and I will not take vacation at the same time, so that

1 one will be available --

2 THE COURT: So one of you will be here?

3 MS. LUNKENHEIMER: Yes.

4 THE COURT: Okay. All right, I'll pick a date and
5 I'll send a notice out.

6 MR. LAMMENDOLA: That's fine, Judge.

7 MS. LUNKENHEIMER: Thank you.

8 THE COURT: All right. Is there anything else we
9 have to do today?

10 MS. LUNKENHEIMER: No, your Honor.

11 THE COURT: Has Mr. Demsky -- he's been processed,
12 right?

13 MS. LUNKENHEIMER: I believe so, yes, I assume he
14 was processed the day of his arrest.

15 THE COURT: Okay. Mr. Lammendola, anything from
16 you?

17 MR. LAMMENDOLA: No, your Honor.

18 THE COURT: All right. Mr. Demsky, good luck to
19 you, all right?

20 THE DEFENDANT: Thank you, your Honor.

21 THE COURT: I hope things work out and --

22 THE DEFENDANT: Thank you.

23 THE COURT: -- thank you very much for coming in
24 today.

25 THE DEFENDANT: Thank you.

1 THE COURT: Ms. Lunkenheimer? Thank you.

2 MR. LAMMENDOLA: Thank you, Judge.

3 MS. LUNKENHEIMER: I just want to introduce you to a
4 new Special Assistant, your Honor.

5 THE COURT: Oh, okay, great.

6 (Discussion held off the record.)

7 THE COURT: All right. Thanks, Nelson. We're
8 adjourned.

9 (Hearing adjourned at 9:54 o'clock a.m.)

10 * * *

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

S:/Geraldine C. Laws, CET
Laws Transcription Service

Date 10/3/12